

BEFORE THE BOARD OF MEDICAL EXAMINERS  
STATE OF MONTANA

IN THE MATTER OF DOCKET NO. CC-05-0262-MED REGARDING:

THE PROPOSED DENIAL OF THE	)	Case No. 2652-2005
APPLICATION OF MICHAEL JENKINS, D.O.,)		
APPLICANT FOR D.O. LICENSE.	)	
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**PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND RECOMMENDED ORDER**

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**I. INTRODUCTION**

In this matter, Michael Jenkins, D.O., appeals the determination of the Montana Board of Medical Examiners which denied his application for licensure in Montana. Hearing Examiner Gregory L. Hanchett convened a contested case hearing on October 14, 2005. Jenkins represented himself and testified on his own behalf. Brian Hopkins, attorney at law, represented the Department of Labor and Industry Business Standards Division (BSD). BSD Exhibits 1 through 8 were admitted by stipulation of the parties. Based on the evidence and argument adduced at hearing, the hearing examiner determines that the Board did not err either in fact or law in denying Jenkins' application for licensure at this time and reaches the following findings of fact, conclusions of law and recommended order.

**II. FINDINGS OF FACT**

1. Jenkins submitted his first application for licensure to the Montana Board of Medical Examiners on July 1, 2004. In that application, Jenkins answered "no" to the question of whether he had ever had any adverse action taken against his medical license by any licensing agency. Jenkins, however, had been denied a license by the Nevada Board of Medical Examiners almost one year earlier on August 12, 2003.

2. Jenkins also answered "no" on the application to the question of whether any complaint had been made against him alleging unethical conduct. In fact, Jenkins had been discharged from the Pontiac Osteopathic Hospital ENT/facial

plastics residency training program located in Michigan in November 2001 before completing the program. His discharge was due in part to his dishonesty. He had wilfully misrepresented an ENT case presentation to his peers. His misrepresentation negatively implicated one of his superiors.

3. Jenkins himself confirmed the nature of his misconduct which led to his discharge from the Pontiac residency program in a Michigan Circuit Court case which he filed against the Pontiac Hospital alleging wrongful discharge. The circuit court found that Jenkins acknowledged “he fabricated the ENT case presentation that implicated one of his superiors and that disciplinary action was warranted.” Exhibit 3, p. 121, *Opinion and Order, Michael Jenkins, D.O. v. POH Medical Center*, Case No. 02-01485-CZ, Oakland County Circuit Court, State of Michigan.

4. In addition, on November 25, 2003, the State of Michigan filed an administrative complaint against Jenkins based on Jenkins’ failure to report the Nevada license denial. By consent decree dated April 1, 2004, Jenkins was fined \$250.00.

5. On November 19, 2004, Jenkins appeared before the Montana Board of Medical Examiners. He told the Board that he had no problems of any sort at the Pontiac Hospital Residency program. In fact, as noted above, he had been involved in the misrepresentation that lead to his dismissal from that program.

6. On November 22, 2004, Jenkins withdrew his application for licensure in Montana and he subsequently filed a new application on January 26, 2005. Exhibit 3. On this application, when again asked if a complaint had ever been made against him alleging unethical behavior, he stated “not formally - Mrs. [Anne] O’Leary [board counsel for the State of Montana Board of Medical Examiners] has information of complaint from a patient.” Jenkins provided the Montana Board with information surrounding this complaint in his second application. In reality, the patient’s complaint was a formal complaint filed against Jenkins with the Nevada Board of Medical Examiners.

### III. CONCLUSIONS OF LAW

1. Mont. Code Ann. § 37-1-137 provides that any grounds for sanctioning a professional license is grounds for denying a professional license.

2. Unprofessional conduct includes fraud, misrepresentation, or concealment of a material fact in applying for a license. Mont. Code Ann. § 37-1-316(3).

Unprofessional conduct also exists where an applicant has been denied a license or has had his professional license in another jurisdiction sanctioned in any manner. Mont. Code Ann. § 37-1-316(7).

3. The administrative rules promulgated by the Board of Medical Examiners likewise provide that fraud, misrepresentation, or concealment of a fact in applying for a license is a basis for imposing sanctions upon a medical license in the State of Montana. Admin. R. Mont. 24.156.625(b). The administrative rules permit the imposition of sanctions upon a Montana license when a licensee has had his license sanctioned in another jurisdiction. Admin. R. Mont. 24.156.625(g).

4. The evidence presented at the hearing in this matter does not convince the hearing examiner that the Board erred either in fact or law in denying Jenkins' application. To the contrary, there are sound bases for denying Jenkins' license at this time. The Nevada board's denial of Jenkins' application for licensure and the Michigan board's disciplinary proceeding and imposition of sanctions against Jenkins are sufficient reasons by themselves to deny him a license in Montana. The fact that the Michigan proceeding was undertaken because Jenkins failed to reveal the license denial in Nevada simply compounds the basis for denying the license here. The Nevada and Michigan actions prove violations of Mont. Code Ann. § 37-1-316(3) and Mont. Code Ann. § 37-1-316(7) and provide a rational basis for denying Jenkins' license in Montana at this time.

5. The situation which lead to Jenkins' discharge from the Pontiac Hospital provides a further basis upon which the Board could find that Jenkins engaged in fraud or concealment or misrepresentation of a fact in his application for licensure. He told the Board at its November 2004 meeting that he was unaware of the basis of his discharge from the Pontiac Hospital. Yet he acknowledged in a judicial proceeding at least one year earlier that he fabricated an ENT case presentation that implicated one of his superiors and that "disciplinary action was warranted." Under the circumstances of this case, the Montana Board's decision to deny Jenkins' application was proper.<sup>1</sup>

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<sup>1</sup> Jenkin's failure to state explicitly on his second application that he had been the subject of a formal complaint filed by a patient in Nevada does not, under the circumstances of this case, rise to the level of misrepresentation that would by itself support license denial. The other bases noted above, however, are more than adequate to support the license denial.

#### IV. RECOMMENDED ORDER

Based on the foregoing, the hearing examiner recommends that the Board deny Jenkins' application for licensure.

DATED this 9th day of December, 2005.

DEPARTMENT OF LABOR & INDUSTRY  
HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT  
GREGORY L. HANCHETT  
Hearing Examiner

#### NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.